

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
CARRINGTON, L. L. C.  
VWP PERMIT NO. 00-1288**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Carrington, L.L.C. for the purpose of resolving certain violations of environmental law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Carrington” or the “permittee” means Carrington, L.L.C. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Project” means the proposed construction of a residential subdivision, which includes roads and infrastructure, known as the Carrington Subdivision located in Henrico County, Virginia. It is bordered on the north by Interstate 295, on the east by State Route 33, and on the west by Old Springfield Road in Glen Allen, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 00-1288.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Carrington is constructing a residential subdivision known as the Carrington Subdivision located in Henrico County. To address mitigation for the permanent impacts to wetlands that will result from the construction of the subdivision and infrastructure, a Permit was issued to Carrington on January 30, 2002, which will expire on January 30, 2008.
2. The Permit allows impacts to 0.317 acres of emergent wetlands and 1.196 acres of nontidal forested wetlands. Compensations mitigation is as follows: The permittee will provide mitigation on a 2:1 acreage basis for the forested wetlands and on a 1:1 acreage basis for emergent wetlands through a purchase of 0.959 credits from the Chickahominy Environmental Bank for impacts to Phases I and II, and a purchase of 1.752 credits from the Chickahominy Environmental Bank for impacts to Phase III.
3. On August 30, 2002, DEQ staff conducted a site inspection of the construction activities at the Carrington Subdivision.
4. DEQ staff observed during the August 30, 2002 site inspection, that some of the E&S controls were not maintained in good working order and thereby, not minimizing the impacts to State waters. Part I.B.8 of the Permit requires that the E&S controls be maintained in good working order to minimize impacts to State waters. In an area designated as Road B, runoff from a large soil pile, located in an area of excavation, was observed draining beneath an improperly installed silt fence. The runoff was eroding the soil pile and adjacent excavated area resulting in siltation/unauthorized fill in a non-impact linear wetland system in an unnamed tributary (UT) to Meredith Branch. Part I.A.1 of the Permit authorizes the permittee to fill no more than 1.196 acres of forested wetlands and 0.317 acres of emergent wetlands.
5. DEQ staff also conducted a file review on August 30, 2002. The file review, revealed that the permittee had failed to notify DEQ in writing by certified mail at least 10 days prior to the initiation of construction of authorized activities as

required by the Permit. The Permit, Part I.D.3, requires that the permittee notify DEQ in writing by certified mail at least 10 days prior to the initiation of authorized activities. Construction was reported to have begun in June 2002 and the permittee failed to submit the 10-day notification letter.

6. The file review revealed that the permittee had failed to submit final plans and specifications for each component construction *prior* to commencement of authorized activities as required by the Permit. Part I.D.8 of the Permit requires that the permittee submit the final plans and specifications for activities authorized by the Permit prior to the beginning of each component construction so that DEQ staff can verify that construction impacts to State waters do not exceed the authorized impacts. The final plans and specifications were due prior to the start of construction in June 2002. (They were received late, on September 10, 2002.)
7. The file review revealed that the permittee failed to submit documentation within 60 days of permit issuance that the ACOE had debited 0.959 credits for Phase I and Phase II from the Chickahominy Environmental Bank ledger. Part I.I.2 of the Permit requires that the permittee submit documentation within 60 days of permit issuance that the ACOE has debited 0.959 credits for Phase I and Phase II from the mitigation bank ledger. Documentation was due by March 31, 2002. (This information was received late, on September 10, 2002.)
8. A file review revealed that the permittee failed to submit documentation before construction began on Phase III that the ACOE has debited 1.752 credits for Phase III mitigation from the Chickahominy Environmental Bank ledger. Part I.I.3 of the Permit requires that the permittee submit the documentation before construction begins on Phase III that the ACOE has debited 1.752 credits for Phase III mitigation from the mitigation bank ledger. Construction of Phase III began in June 2002, and no documentation was received by DEQ.
9. On September 10, 2002, DEQ staff contacted the permittee and informed him of violations of the Permit determined from observations during the August 30, 2002 site inspection and from the staff's August 30, 2002 file review.
10. During the September 10, 2002 phone call, the permittee, confirmed that construction of the project had begun in June 2002.
11. On September 26, 2002, DEQ staff conducted another site inspection of the subdivision.
12. During the September 26, 2002 site inspection, DEQ staff again observed E&S control problems, which included unauthorized fill in a linear wetland area and heavy siltation in an UT to Meredith Branch. The permittee exceeded the allowed wetland impacts as a result of the unauthorized fill in non-impact wetland areas. In an area designated as the Access Road, staff observed unauthorized fill of

several inches deep, for a length of 50 feet in a non-impact linear wetland area due to lack of E&S controls. The staff also observed on Road B, an improperly installed silt fence. Runoff was observed draining beneath the improperly installed silt fence located adjacent to an excavated area where culverts had recently been installed. The runoff was eroding the banks of the excavated area which resulted in siltation in the UT of Meredith Branch downstream of the culverts. Part I.B.8 of the Permit requires that erosion and sediment controls be maintained in good working order to minimize the impacts to State waters; and Part I.A.1 of the Permit requires the permittee comply with and not exceed the authorized impacts to wetlands and waters of the State.

13. On September 27, 2002, DEQ staff returned to the site and conducted an inspection with the permittee and contractor. The staff discussed and photographed the same violations observed the previous day.
14. An October 4, 2002 site inspection confirmed that the 50 feet of unauthorized fill was removed from the linear wetland system and the area was restored by the permittee within 5 days of DEQ notification of the problem.
15. DEQ staff also conducted a file review on September 26, 2002. The file review revealed that the permittee had failed to submit a quarterly construction monitoring report as required by the Permit. Part I.D.9 of the Permit requires that the permittee submit quarterly construction monitoring reports to document progress of construction activities authorized by the Permit. A report was due in September 2002. (It was received late, in December 2002.)
16. DEQ issued a Notice of Violation (NOV) to Carrington on October 31, 2002, citing the Permit violations, as listed above.
17. On November 25, 2002, a meeting was held with the permittee and consultants of Carrington to discuss resolution of the violations listed in the NOV.
18. On December 12, 2002, an unscheduled site inspection was conducted at the Carrington subdivision. At that inspection, DEQ staff observed that the permittee had impacted additional wetlands.
19. During the December 12, 2002, site inspection, staff again observed problems with E&S control measures and unauthorized fill in a non-impact wetland area. DEQ staff observed at the area designated as the Access Road, unauthorized fill in approximately 150 linear feet of a linear wetland system designated as non-impact wetlands. The unauthorized fill occurred due to improperly installed E&S control measures. The impacted area included the 50 linear feet of previously impacted and restored linear wetland system in the UT to Meredith, plus an additional 100 linear feet of impacts. Sediment in the UT to Meredith Branch ranged from 4-9 inches in depth. Part I.A.1 of the Permit, authorizes the permittee to fill no more than 1.196 acres of forested wetland and 0.317 acres of emergent wetlands. Part

I.B.8 of the Permit, requires that E&S controls be maintained in good working order to minimize impacts to State waters.

20. The permittee informed DEQ staff that the 150 linear feet of fill would be removed by the next day, December 13, 2002.
21. A site inspection by DEQ staff on December 13, 2002, observed that the 150 linear of unauthorized fill had not been removed from the UT to Meredith. Riprap had been installed in the area as a temporary E&S control measure.
22. On January 21, 2003, a NOV was issued to Carrington citing noncompliance with E&S control measures and unauthorized fill in a non-impact wetland area.
23. On March 5, 2003, DEQ staff met with the permittee, his contractor and the County to discuss siltation problems at the site.
24. On May 8, 2003, DEQ staff made a site inspection and observed impacts to 0.055 acre of non-impact forested wetlands. The observed impacts were from storm water discharges located within the non-impact wetland boundary and a temporary sanitary sewer line crossing. Part I.A.1 of the Permit authorizes the permittee to fill no more than 1.196 acres of forested wetlands and 0.317 acres of emergent wetlands.
25. On May 8, 2003, DEQ staff determined from a file review of the final plans and specifications of construction activities that an additional impact of 0.07 acre to non-impact wetlands were depicted on the plans. Part I.A.1 of the Permit authorized the permittee to fill no more than 1.196 acres of forested wetlands and 0.317 acres of emergent wetlands.
26. On June 18, 2003, a NOV was issued to Carrington citing noncompliance with the Permit due to the observed unauthorized fill in a non-impact wetland area.
27. In November 2003, Carrington, with VDOT's permission, flushed and pumped a VDOT stormwater pipe of sediment. Construction of this subdivision required connection to this pipe which had been discharging sediment into State waters in the Carrington subdivision during rainfall events.
28. In November 2003, the ACOE made a site visit to the Carrington subdivision, re-flagged the wetlands in the Phase III section, thereby, reducing the acreage of confirmed wetlands in Phase III section of the subdivision
29. On December 9, 2003, DEQ staff made a site visit and observed failure to maintain silt fencing, failure to maintain flagging and unauthorized impacts to a protected wetland area.

30. On December 15, 2003 DEQ staff and Carrington made a site inspection to discuss resolution of the violations observed during the December 9, 2003 site visit.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Carrington, and Carrington voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Carrington, and Carrington voluntarily agrees to pay a civil charge of **\$9,500.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note the Federal Identification Number for Carrington. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Carrington, for good cause shown by Carrington, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Carrington admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Carrington consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Carrington declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or

law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Carrington to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Carrington shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Carrington shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Carrington shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Carrington. Notwithstanding the foregoing, Carrington agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Carrington. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Carrington from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Carrington voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Carrington voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, who is  
(name)  
\_\_\_\_\_ of Carrington, on behalf of Carrington.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.



## **APPENDIX A**

Carrington shall:

1. As soon as possible, but no later than March 30, 2004, coordinate with Henrico County to install check dams in the UT to Meredith Branch, upstream of the Road B crossing; or provide and implement an alternate approvable plan to contain unauthorized fill discharges into the UT to Meredith Branch in an attempt to minimize impacts to downstream reaches.
2. By no later than March 30, 2004, remove by hand the unauthorized fill/sediment in the UT to Meredith Branch.
3. Within 30 days of issuance ACOE reconfirmation of wetland impact in Phase III of the subdivision, submit to DEQ, PRO an approvable revised plan sheet showing impacts in Phase III and a revised impact table. Within 30 days of DEQ approval of revised Phase III impacts, submit to DEQ the proof of recordation that the ACOE has debited the appropriate credits (providing a 2:1 mitigation to impact ratio) for Phase III impacts from the Chickahominy Environmental Bank.
4. Apply for a permit modification for any change in impact acreage and mitigation within 30 days of ACOE confirmation of wetland impacts in Phase III.